

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE EX PARTE APPLICATION OF  
SUNGROVE CO., LTD.,

Case No. 22-mc-80225-JSC

**ORDER RE: SECTION 1782  
APPLICATION**

Re: Dkt. No. 1

United States District Court  
Northern District of California

Sungrove Co., Ltd., has filed an *ex parte* application to take discovery pursuant to 28 U.S.C. § 1782. (Dkt. No. 1.) Sungrove seeks an order allowing it to issue a subpoena to obtain discovery from Automattic seeking information regarding an anonymous blog author named “sagimetsu2” to aid foreign litigation in Japan. The Court previously granted a Section 1782 application by Sungrove seeking discovery from Automattic regarding an anonymous blog author named “sagimetsu.” *See In Re: Ex Parte Application of Sungrove Co., Ltd.*, No. 22-80036 JSC, Dkt. No. 20. Sungrove alleges that the same individual is now posting similarly defamatory information under the pseudonym “sagimetsu2.” Upon consideration of the application and the relevant legal authority, the Court GRANTS the application.

**BACKGROUND**

Sungrove is a Japanese corporation, whose primary business is providing clients with website creation and search engine optimization services. (Dkt. No. 1-1 at ¶¶ 2-3.) Sungrove contends that an anonymous blog author using the pseudonym “sagimetsu2” created a WordPress website titled “In regard to Sungrove.” (Dkt. No. 1-1 at ¶ 7; Dkt. No. 1-1 at 12; Dkt. No. 1-3 at 3.) WordPress is owned by Automattic. The post begins “[t]his is how I was ‘lawfully defrauded’ scrupulous methods targeting sole proprietors, although the business agreed to a refund, ‘if you

disclose information online, 1,000,000 Yen for breach of contract.” (Dkt. No. 1-3 at 3-4.) This post is nearly identical to a post on a similar WordPress website posted by an anonymous blog author using the pseudonym “sagimetsu.”

In *In Re: Ex Parte Application of Sungrove Co., Ltd.*, No. 22-80036 JSC, the Court granted Sungrove’s Section 1782 application seeking discovery from Automattic regarding the identity of the anonymous blogger “sagimetsu.” *Id.* at Dkt. Nos. 17, 20. The Court’s order there set forth in greater detail the background regarding the anonymous post and the suspected author and is incorporated here by reference. *Id.* at Dkt. No. 17. As in the prior action, Sungrove seeks discovery to assist it in bringing a civil defamation claim against the anonymous blog author. (Dkt. No. 1-1 at ¶¶ 27-28.)

### LEGAL STANDARD

Section 1782(a) provides, in pertinent part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

28 U.S.C. § 1782(a). A litigant in a foreign action qualifies as an “interested person” under Section 1782. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 256 (2004). To apply for discovery pursuant to Section 1782, a formal proceeding in the foreign jurisdiction need not be currently pending, or even imminent. *Id.* at 258-59. Instead, all that is necessary is that a “dispositive ruling” by the foreign adjudicative body is “within reasonable contemplation.” *Id.* at 259 (holding that discovery was proper under Section 1782 even though the applicant’s complaint was still only in the investigative stage). When it comes to requests directly from foreign courts, district courts typically handle Section 1782 discovery requests in the context of an *ex parte* application for an order appointing a commissioner to collect the information. *See In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976) (holding that the subpoenaed parties may object and exercise due process rights by bringing motions to quash the

subpoenas after the court issues a Section 1782 order); *see, e.g., In re Request for Int’l Judicial Assistance from the Nat’l Ct. Admin. of the Republic of Korea*, No. C15-80069 LB, 2015 WL 1064790, at \*2 (N.D. Cal. Mar. 11, 2015) (granting *ex parte* application for a Section 1782 order); *In re Request for Int’l Judicial Assistance from the 16th Family Ct. of the Supreme Ct. of Justice of the Fed. Dist.*, No. 14-mc-80083-JST, 2014 WL 1202545, at \*1 (N.D. Cal. Mar. 19, 2014) (same).

“A district court’s discretion is to be exercised in view of the twin aims of [Section] 1782: providing efficient assistance to participants in international litigation, and encouraging foreign countries by example to provide similar assistance to our courts.” *Nat’l Ct. Admin. of the Republic of Korea*, 2015 WL 1064790, at \*2 (citing *Schmitz v. Bernstein Libehard & Lifshitz, LLP*, 376 F.3d 79, 85 (2d Cir. 2004)). The party seeking discovery need not establish that the information sought would be discoverable under the foreign court’s law or that the U.S. would permit the discovery in an analogous domestic proceeding. *See Intel*, 542 U.S. at 247, 261-63.

### DISCUSSION

As with its prior Section 1782 application seeking discovery regarding a nearly identical blog post, Sungrove’s application satisfies the minimum requirements of Section 1782. First, Automatic’s principal place of business is in San Francisco, California which is within the Northern District of California. (Dkt. No. 1-2 at ¶ 7.) Second, although the discovery is not sought for a proceeding presently pending before a foreign tribunal, Sungrove has shown a “reasonable contemplation” of litigation. *See Intel*, 542 U.S. at 259. Third, Section 1782 plainly states that discovery orders may issue upon the request of either a foreign tribunal or an interested party. 28 U.S.C. § 1782(a). Sungrove—as the prospective litigant—has a “reasonable interest” in obtaining judicial assistance and, therefore, may apply for judicial assistance pursuant to Section 1782. *See Akebia Therapeutics, Inc. v. Fibrogren, Inc.*, 793 F.3d 1108, 1110 (9th Cir. 2015). Lastly, the instant *ex parte* application is an acceptable method of requested discovery under Section 1782. *See Tokyo Dist., Tokyo, Japan*, 539 F.2d at 1219.

The Court also finds good cause to exercise its discretion to authorize the requested discovery and adopts the reasoning set forth in its prior order. *In Re: Ex Parte Application of*

*Sungrove Co., Ltd.*, No. 22-80036 JSC, Dkt. No. 17.

### CONCLUSION

For the reasons described above, the Court GRANTS the 1782 application.

This Order does not foreclose a motion to quash or further modify the subpoena by Automatic, following service or by the Automatic account holder or account user whose identifying information is sought. The Court orders Sungrove and Automatic to comply with the following requirements to ensure all interested persons have an opportunity to contest the subpoena if they wish:

1. At the time of service of the subpoena, Sungrove must also serve a copy of this order and the Court's orders in *In Re: Ex Parte Application of Sungrove Co., Ltd.*, No. 22-80036 JSC, Dkt. Nos. 17, 20, on Automatic.
2. Within 10 calendar days of service of the subpoena and the order, Automatic shall notify the account holder(s) or account user(s) within the scope of the subpoena that their identifying information is sought by Sungrove and shall serve a copy of this order and the Court's orders in *In Re: Ex Parte Application of Sungrove Co., Ltd.*, No. 22-80036 JSC, Dkt. Nos. 17, 20, on each such person.
3. Automatic and/or any person whose identifying information is sought may, within 21 days from the date of the notice, file a motion in this Court contesting the subpoena (including a motion to quash or modify the subpoena).
4. Alternatively, any person whose identifying information is sought may, within 21 days from the date of the notice, advise Automatic in writing of any objections he or she has to disclosure of the information and the bases for any such objections. Within 10 days of receipt of any such objections, Automatic shall so advise the Court.
5. If any person contests the subpoena or objects to any portion of it, Automatic shall preserve, but not disclose, the information sought by the subpoena pending resolution of that contest or objection.
6. Any information Sungrove obtains pursuant to the subpoena may be used only for

1 purposes of the anticipated action for defamation, and Sungrove may not release  
2 such information or use it for any other purpose, absent a Court order authorizing  
3 such release or use.

4 This Order disposes of Docket No. 1.

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6 **IT IS SO ORDERED.**

7 Dated: September 26, 2022

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10 JACQUELINE SCOTT CORLEY  
11 United States District Judge  
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